

Part K

Natural Resources, Environment, and Agriculture

Natural Resources

Land Preservation

Disposition of State Lands

Under current law, a State agency initiates the process for disposing of property by notifying the Maryland Department of Planning (MDP) of excess property under its control. MDP then studies the proper disposition of the property, solicits comments from other State agencies, local governments, and local elected officials, determines whether other State agencies or local governments are interested in the property, and makes a summary of findings and/or disposition recommendation to the agencies and the Board of Public Works (BPW).

After receipt of MDP's recommendation, the Department of General Services (DGS) or the Maryland Department of Transportation (MDOT) requests placement on the BPW agenda. Based on the findings and recommendations, BPW determines whether excess property should be (1) disposed of to another government unit, (2) retained by the State, or (3) declared "surplus" and disposed of to anyone.

Following BPW's determination, either DGS or MDOT disposes of the property subject to any conditions imposed by BPW. Final disposition of any real property is subject to BPW approval for consideration BPW decides is adequate. Cash proceeds are remitted to the State Treasurer, except that (1) cash proceeds from the disposition of a capital asset are applied to the State Annuity Bond Fund Account, (2) if the capital asset was originally purchased with any special funds, the proceeds revert to that fund, and (3) any money received by the State as consideration for property acquired under Program Open Space (POS) is deposited in the Advance Option and Purchase Fund within the Department of Natural Resources (DNR).

According to the statutory and regulatory requirements, a property is supposed to be declared surplus by BPW before it is marketed for sale. In practice, however, BPW is often asked to make a determination that a property is surplus at the same time it is presented with a contract of sale for its consideration and approval. In effect, BPW is concurring that property is surplus and approving the sale consideration concurrently.

Chapter 432 of 2004 requires that, prior to BPW approval of the sale of any State-owned real or personal property with an appraised value over \$100,000, the Senate Budget and Taxation Committee and the House Committee on Appropriations must receive a written description of the property in question. The committees are also provided with a 45-day review and comment period concerning proposed sales.

Concern was raised in September 2004 as a result of a proposal to sell an 836.5-acre tract of land in St. Mary's County (the Salem Tract). The land, which is currently a timber forest, was purchased by the State in October 2003 in order to preserve its significant contribution to Maryland's resource-based industry and its high overall ecological value. A purchaser expressed interest in buying the Salem Tract and donating associated development rights to the State over time. While the prospective purchaser eventually withdrew from the proposed transaction, several members of the General Assembly and the public at large were concerned about the lack of legislative oversight of the sale of State-owned land in general and conserved property in particular. As a result, a number of bills were introduced during the 2005 session to increase the role of the General Assembly and the public in the State land sale process.

Senate Bill 102 (passed) amends the Constitution to prohibit BPW from approving the sale, transfer, exchange, grant, or other permanent disposition of any State-owned outdoor recreation, open space, conservation, preservation, forest, or park land without the express approval of the General Assembly or of a committee that the General Assembly designates by statute, resolution, or rule. This proposed amendment must be adopted by the qualified voters of the State at the next general election, 2006, in order to become law. *House Bill 67 (failed)*, as passed by the House, was identical to *Senate Bill 102*.

Senate Bill 306 (passed) establishes new requirements with respect to the disposition of State-owned outdoor recreation, open space, conservation, preservation, park, or forest land. The bill establishes new requirements relating to the determination of such property as excess, the declaration of property as surplus, and the final disposition approval by BPW. The bill also provides for the repayment of State transfer tax revenues transferred after fiscal 2005 and alters when transfer tax over attainment may be spent. Finally, DNR, in cooperation with MDP, DGS, and the Department of Budget and Management, must study and report to the Governor and specified committees of the General Assembly regarding lease, license, and easement interests related to specified State-owned land.

This bill establishes a number of new requirements relating to the determination of State-owned property as excess. The requirements apply to certain property owned by the State in fee simple, including property acquired with POS and Rural Legacy Program funds, public park land and recreational areas, wildland and open areas, heritage conservation areas, forest conservation areas, GreenPrint areas, property identified in DNR's public lands acreage report, and any other outdoor recreation, open space, conservation, preservation, park or forest land identified by DNR in regulation. For these properties, when notifying MDP that the property is excess, a unit of State government must include certain information that it considered prior to declaring the property excess and make that information available upon request. This information includes the history of the acquisition of the property and any environmental, ecological, cultural, or historical attributes of the property.

After receiving such notice, MDP must notify specified committees of the General Assembly of the declaration of excess. Additionally, MDP must notify those General Assembly members who represent the district in which the property is located as well as adjacent property owners. If the value of the land is \$100,000 or greater, MDP must conduct a public hearing for the property if one is requested by a member of the public who received notice or who lives in the county in which the land is located. If a public hearing is not requested, MDP must nevertheless accept and consider public comments. Finally, MDP must determine whether any proposed disposition would conform to the local comprehensive plan, consolidate all the information received, and submit that information to the using unit. The bill authorizes the using unit to then rescind the notice of excess. If the unit does not do so, MDP must make its disposition recommendation to the unit and BPW and notify specified committees and members of the General Assembly of the recommendation.

Next, *Senate Bill 306* establishes provisions governing the declaration of property as surplus and modifies provisions governing disposition approval by BPW. It establishes new provisions applicable to the State-owned real property identified in the excess-process portions of the bill and State-owned real or personal property funded pursuant to an appropriation act of the General Assembly that has an appraised value over \$100,000. For such property, BPW may not approve the disposition until (1) DGS submits two independent appraisals (these appraisals must be kept confidential if BPW intends to sell the property through auction), (2) BPW submits information to specified committees of the General Assembly, and (3) 45 days have elapsed since the committees received the notice and BPW declared the property as surplus.

For property that meets both of the above conditions, the Legislative Policy Committee (LPC) or the full General Assembly must approve any proposed disposition. LPC may (1) approve the proposed disposition and refer it back to BPW, (2) refer the proposed disposition to the full General Assembly, or (3) do nothing. The failure of LPC to take action within 45 days is deemed an approval. If a proposed disposition is referred to the full General Assembly, it may not be approved by BPW unless it is approved through legislation at the General Assembly's next legislative session. The General Assembly may approve the disposition with or without conditions.

For State-owned outdoor recreation, open space, conservation, preservation, park, or forest land that has been declared as surplus, BPW must sell it to the federal government or a local government for \$1 if the government has indicated its interest in the land and a restrictive covenant is placed on the property.

The bill's provisions are prospective and do not apply to pending or active disposal agreements between a county or counties and the State for State-owned property located in Garrett County.

In addition to addressing the property disposition process, *Senate Bill 306* contains provisions related to land preservation funding. Transfer tax is the primary funding source for State land conservation programs, including POS. The bill provides that in any fiscal year in which an appropriation or transfer is made from the transfer tax special fund to the general fund, any overattainment of transfer tax revenue from the prior fiscal year must be allocated to the current fiscal year according to the existing statutory allocation of transfer tax revenues.

Currently, such overattainment is allocated to the programs in the second subsequent fiscal year. Because the Budget Reconciliation and Financing Act of 2005 (BRFA), *House Bill 147 (passed)* redirects \$90 million in transfer tax revenues to the general fund in fiscal 2006, the bill's overattainment provision would be triggered, and an estimated \$82.5 million will be available for distribution to the land preservation programs in fiscal 2006, instead of fiscal 2007.

Beginning in fiscal 2012, the bill provides for the repayment of State transfer tax revenues transferred to the general fund after fiscal 2005 by including the transfer tax special fund in the provisions relating to the disposition of any unappropriated general fund surplus. The repayment provisions would only take effect once the Transportation Trust Fund has been fully repaid in accordance with current statutory requirements governing the disposition of any unappropriated general fund surplus. The bill also requires that at least \$1.5 million of the State's share of POS funds be used to provide grants to Baltimore City.

House Bill 4 (failed) as passed by the House was very similar to *Senate Bill 306* as passed. *Senate Bill 103*, *Senate Bill 104*, and *House Bill 903 (all failed)* contained various provisions related to the disposal of State-owned protected property, many of which were incorporated into the final version of *Senate Bill 306*, including increasing public notification and participation in the public land disposal process, requiring public records to be created at the excess and surplus stages, and requiring the review and/or approval of dispositions by LPC or the full General Assembly.

Land Conservation Program Funding

The General Assembly approved a significant \$88 million increase in State funding for land conservation programs in fiscal 2006. While the Administration sought to divert \$163.3 million in fiscal 2006 State transfer tax revenue to the general fund, the General Assembly cut this reduction, through the Budget Reconciliation and Financing Act of 2005 (*House Bill 147*), by more than half and provided a total of \$124.6 million for local and State land conservation programs, as shown in **Exhibit K-1**. The fiscal 2006 legislative appropriation provides a \$115.6 million increase over fiscal 2005 in transfer tax revenue for land conservation programs. Also, the General Assembly did not accept the Governor's proposal to redirect a specified percentage of transfer tax revenues to the general fund in future years.

Exhibit K-1
State Funding for Land Conservation Programs
(Fiscal 2005 - 06)

	<u>FY 2005</u> <u>Appropriation</u>	<u>FY 2006</u> <u>Governor's</u> <u>Proposal</u>	<u>FY 2006</u> <u>Legislative</u> <u>Appropriation*</u>
Program Open Space (POS)	\$23,435,000	\$34,443,979	\$89,506,232
POS Local	15,000,000	17,221,989	44,753,116
POS State	8,435,000	17,221,989	44,753,116
Additional State Land Acquisition	0	471,643	1,204,341
MD Agricultural Land Preservation Program (MALPP)	8,000,000	13,255,515	25,748,015
Rural Legacy**	2,000,000	7,358,216	6,021,705
Heritage Conservation Fund	0	848,958	2,167,814
GreenPrint Program	3,000,000	0	0
Total	\$36,435,000	\$56,378,311	\$124,648,107

Note: POS and MALPP receive funding from other sources (federal funds and matching funds from local jurisdictions).

* The fiscal 2006 legislative appropriation earmarks State side POS funds for Baltimore City park operations and maintenance (\$1.5 million) and State Forest and Park Service operations (\$1.5 million).

** The fiscal 2006 legislative appropriation also earmarks at least \$7.6 million in State side POS funds for the Rural Legacy Program.

*** The fiscal 2006 legislative appropriation does not include any additional overattainment that will result from the enactment of Senate Bill 306.

Source: Department of Legislative Services

The Maryland Heritage Areas Authority (MHAA) was established in 1996 to foster heritage tourism by providing technical and financial assistance to create additional historic and cultural destinations within the State. The MHAA Financing Fund generally receives funding from the transfer tax through Program Open Space (POS). *House Bill 415 (passed)* increases the amount of POS funding, from \$1 million to up to \$3 million, that is authorized to be transferred to the MHAA Financing Fund. The bill also requires MHAA to study and report to specified

committees of the General Assembly regarding the status, expense, and achievements related to heritage areas by December 31, 2005.

Chesapeake Bay

Introduction of Nonnative Oysters

In an effort to revive the oyster industry and replace the natural filters of the Chesapeake Bay, the State is studying the introduction of the nonnative Suminoe or Asian oyster. A number of organizations have studied or begun to study the possible effects of the introduction of the Suminoe oyster into east coast waterways. The National Research Council (NRC), in a 2004 report on the Suminoe oyster, conceded that the oyster seems more disease-resistant than the native oyster but stressed that the results were preliminary. NRC suggested that longer-term studies of the nonnative oyster, up to five years, were needed before a determination could be made as to the likely effects of a nonnative oyster program. In a 2004 report resulting from a workshop of research scientists, the Scientific and Technical Advisory Committee (STAC), part of the Chesapeake Bay Program, outlined priority research needs to be clarified prior to a final decision on the introduction of nonnative oysters to the bay. Maryland, Virginia, and the U.S. Army Corps of Engineers are voluntarily preparing an environmental impact statement (EIS) on the possible introduction of the Suminoe oyster to the Chesapeake Bay. DNR anticipates the EIS process to be completed in 2005.

Senate Bill 405/House Bill 1250 (both passed) prohibits DNR from introducing a nonnative oyster into State waters or issuing a permit for the introduction by another person unless (1) the recommendations set forth in the 2004 NRC report have been met to the extent feasible for the State, (2) the specific research recommendations set forth in the 2004 STAC publication have been fully met, (3) a draft environmental impact statement has been completed, and (4) an independent oyster advisory panel has reviewed and approved specified data and assessments and identified any additional recommended research.

Before DNR can introduce a nonnative oyster into State waters or issue a permit to another person for an introduction, DNR must (1) submit a report to the General Assembly demonstrating that the above requirements have been met, (2) conduct public hearings, (3) receive written public comments on its decision, and (4) issue and publish a final decision. Introduction may not occur until at least 60 days after issuance of a final decision.

The bills also make it a misdemeanor, subject to imprisonment for up to two years or a fine of up to \$25,000 or both, to introduce a nonnative oyster into State waters without a permit. A person who introduces oysters without a permit is also liable for a civil penalty of up to \$25,000 and, in the discretion of the court, the actual costs associated with remediation of the introduction.

Chesapeake Bay Trust

The Chesapeake Bay Trust is a private, nonprofit organization established by the General Assembly in 1985 to promote public awareness and participation in the restoration and protection of the water quality and aquatic and land resources of the Chesapeake Bay. Among

its purposes, the trust provides grants to a variety of entities for citizen involvement projects, develops projects for corporate sponsorship, and develops criteria for citizen involvement projects or corporate sponsorship projects.

The trust is statutorily limited to funding projects in the Chesapeake Bay watershed, but it receives contributions from all parts of the State through the purchase of the Chesapeake Bay license plate and the Chesapeake Bay and Endangered Species Fund on the Maryland State income tax form. *House Bill 1469 (passed)* allows the trust to fund projects outside the Chesapeake Bay watershed, by expanding the purpose and scope of the trust to include aquatic and land resources of the State other than those related to the Chesapeake Bay. The bill will enable the trust to support projects that increase participation in the restoration and protection of the Atlantic Coastal Bays and the streams and rivers of the western portion of Garrett County.

Generally, money of the trust may be invested in bonds or other obligations of, or guaranteed as to principal and interest by, the United States, the State, or the political subdivisions or units of the State. *House Bill 1470 (passed)* modifies the authority of the Chesapeake Bay Trust to invest in bonds or other securities and requires that the overall investment portfolio of the trust have a rating of at least AA.

Consolidation of State Forest and Park Rangers and Natural Resources Police

DNR has two police forces, the Natural Resources Police (NRP) and the State Forest and Park Service (SFPS) rangers. NRP is responsible for enforcing a variety of State natural resources laws related to boating, hunting, fishing, pollution, and wildlife. SFPS rangers are responsible for law enforcement activities in the State's parks, forests, and other public lands.

In December 2003, the Governor's Commission on Structure and Efficiency of State Government (the Mandel Commission), in its final report, recommended that the law enforcement functions of SFPS and NRP be consolidated. On March 25, 2004, the State signed a Memorandum of Understanding (MOU) with the State Law Enforcement Officers' Labor Alliance to merge the SFPS rangers into NRP and reclassify the rangers in corresponding NRP classifications. After the consolidation, NRP will also be responsible for law enforcement on State lands. Pursuant to the MOU, the consolidation became effective January 1, 2005, and will be fully implemented by January 1, 2006.

House Bill 1353 (passed) is an emergency bill which mandates that in the consolidation of NRP and SFPS rangers, all employees commissioned as law enforcement officers of SFPS will retain their commission and certification for the duration of their employment with SFPS or any successor organization and that the classification title of law enforcement positions at or above the rank of sergeant will reflect the status of the position as a law enforcement officer. The bill clarifies the eligibility for promotional opportunities for SFPS rangers.

NRP officers remain in a probationary status for a period of two years from the date of initial appointment to NRP during which the Secretary of Natural Resources may discharge the officer for any cause. *Senate Bill 380 (passed)* exempts a person from this probationary status if

the person was a sworn law enforcement employee of SFPS on March 24, 2004, and was appointed as a NRP officer between July 1, 2004, and December 31, 2005, inclusive.

Miscellaneous

Tree Experts

A person may not engage in the work or business of a tree expert without a tree expert license issued by DNR. A “tree expert” is a person who holds himself out as being skilled in the science of tree care and who engages in the business or work of the treatment and care of trees for compensation by making diagnoses, prescribing care, and supervising the treatment for trees.

House Bill 168 (passed) was introduced in response to a 1996 study of the State’s tree care industry conducted by DNR, in coordination with the Maryland Community Forest Council, the Maryland Arborist Association, and the Mid-Atlantic Chapter of the International Society of Arboriculture. The bill alters the definition of “tree expert” to include persons who represent themselves to the public as skilled in the trimming, pruning, thinning, cabling, shaping, removing, or crown reduction of trees. The bill specifically exempts from that definition loggers, underground utility contractors, and persons who treat, care for, or remove a tree that is 20 feet tall or less.

Endangered and Threatened Species

The Nongame and Endangered Species Conservation Act generally prohibits the “tak[ing]” of animals listed on the official State Threatened and Endangered Species List, as established in regulation. “Take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Under current regulations, a permit to take any listed species may be obtained from DNR under certain circumstances.

The puritan tiger beetle (*Cicindela puritana*) is currently listed by State and federal law as an endangered species. The vast majority of the world’s population of the puritan tiger beetle occurs in Maryland. They are found only at cliffs along the Chesapeake Bay in Calvert County and along cliffs in Cecil and Kent counties. Many of the cliffs are held in private ownership and shore erosion techniques implemented on those cliffs threaten the beetle’s habitat and may result in a taking. *House Bill 972 (passed)* authorizes the Secretary of Natural Resources to issue a permit for the “incidental taking” (a taking of listed species that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity) of the puritan tiger beetle under specified conditions. An applicant for a permit must submit a conservation plan.

Hunting and Fishing

Hunting

Licenses

Except under specified conditions, a person may not hunt or attempt to hunt game birds and mammals in the State without a license. There are several different types of hunting licenses

in Maryland. Hunting licenses are valid from August 1 through July 31 of each year. License fees are paid into the State Wildlife Management and Protection Fund and must be used mainly for the scientific investigation, protection, propagation, and management of wildlife. A nonresident of any age must purchase either a nonresident hunting license or a nonresident three-day hunting license. *House Bill 608 (passed)* establishes a nonresident junior hunting license to be issued by the Department of Natural Resources (DNR) to nonresidents younger than 16 for a \$65 fee. This bill also repeals the reciprocal licenses offered to residents of Delaware, Pennsylvania, Virginia, and West Virginia; the fee for a nonresident regular license will now be \$130 regardless of the nonresident's state.

Waterfowl

Current law specifies areas in the State where a person may hunt wild waterfowl from a boat or while in water standing on the natural bottom. DNR may establish by regulation additional areas in the State where an individual may hunt waterfowl from a boat or while standing in water on the natural bottom. In general, an individual must remain at least 800 yards from shore and at least 250 yards from all offshore stationary blinds or blind sites or another person hunting wild waterfowl offshore. On the tidal Potomac River, the area from the Route 301 bridge to the mouth of the Potomac is currently open for this purpose. The minimum distance from shore does not apply to a person standing in water on the natural bottom while hunting at a licensed blind or blind site or a person hunting wild waterfowl from a boat anchored at a licensed blind or blind site.

House Bill 380 (passed) decreases the minimum distance, from 800 to 400 yards, that a person hunting wild waterfowl in specified tidal waters of the Potomac River while standing in water on the natural bottom, from a boat drifting or being sculled, or from an anchored boat, must be from shore. DNR asserts that this bill will provide increased waterfowl hunting opportunities.

Land Management

DNR manages over 400,000 acres of land. Under its general authority, DNR may open or close lands under its management to public hunting or any other public use. Chapter 177 of 2002, which increased various hunting license fees, stated the intent of the General Assembly that DNR use special fund revenue generated as a result of that legislation, as appropriate, to open to public hunting at least half the total acreage that is leased for hunting to private individuals on the Chesapeake Forest Lands properties by the 2005-06 hunting season. *House Bill 1086 (passed)* requires DNR to keep land managed by it open for hunting unless DNR determines that the land must be closed for reasons of public safety, fish or wildlife management, homeland security, or as otherwise required by law. Under this bill, DNR also must manage land under its authority to support, promote, and enhance hunting opportunities to the extent authorized under State law, and manage land under its authority to prevent, to the greatest practical extent, any net loss of acreage available for hunting opportunities on land managed by DNR.

Local Restrictions

Because white-tailed deer thrive in a habitat that is composed of woods and openings, and because hunter access in those areas is limited, recent suburban development has provided excellent deer habitat in the State. The high population of deer has resulted in a marked increase in the number of human-deer conflicts, including deer-vehicle collisions, damage to crops and vegetation, and incidents of lyme disease.

DNR establishes the open season to hunt forest and upland game birds and mammals by regulation each year. There are three seasons to hunt deer in Maryland: (1) deer bow hunting season; (2) deer firearms season; and (3) deer muzzle loader season. Except for specified persons and under specified conditions, hunting game birds or mammals on Sundays is prohibited. While hunting for any wild bird or mammal, a person (other than the owner or occupant) is prohibited from shooting or discharging any firearm or other deadly weapon within 150 yards (known as the “safety zone”) of a dwelling house, residence, or other building or camp occupied by people. A person also may not shoot at any wild bird or mammal while it is within the safety zone, or hunt or willfully chase any wild bird or mammal within the safety zone, without the permission of the owner or occupant.

Senate Bill 943/House Bill 1388 (both passed) authorize a person to hunt deer on private property with a bow and arrow on the last three Sundays during open season in October and on the second Sunday in November in Dorchester County. The bill also expands the definition of “safety zone” to include the area within 150 yards of a church.

Leghold Traps

In Anne Arundel, Baltimore, Montgomery, and Prince George’s counties, a person may not use, set, place, or maintain any steel-jaw leghold trap on land. The steel-jaw leghold trap may be used for the capture of furbearing mammals in water only. This prohibition does not apply to traps set on farmland by the owner of the farmland, by the owner’s agent or tenant, by the owner’s lessee, or by any member of the owner’s or tenant’s immediate family who resides on the farmland. The prohibition also does not apply to traps set by an authorized agent of the Maryland Forest, Park, and Wildlife Service under guidelines established by DNR.

House Bill 258 (failed) and *House Bill 372 (failed)* both addressed the prohibition of the use of leghold traps. *House Bill 372* would have repealed existing prohibitions relating to the use of steel-jaw leghold traps in specified counties and would have established a statewide prohibition on the use of leghold traps, with specific exceptions. *House Bill 258* would have applied the existing prohibition relating to the use of steel-jaw leghold traps on land in specified counties to Howard County.

Black Bears

According to DNR, the State’s population of black bears, which is approaching 500, has increased significantly since the early 1990s. Until 2004, a regulatory ban on hunting black bears had been in effect since 1953. Improved habitats and the absence of natural predators also contribute to the steady growth of the bear population. As the population has grown, so has the number of sightings and complaints. DNR has responded to these complaints by providing

technical assistance and educational materials to landowners and electric fencing to beekeepers. Since 1996, the sale of black bear conservation stamps has generated funds to compensate farmers and other landowners who report damage to agricultural crops caused by black bears.

Because black bears are classified as forest game mammals, DNR has the authority to establish an open season to hunt them. For the 2004 season, DNR adopted regulations instituting a limited black bear hunt, with a harvest target of 30 bears. DNR received over 2,000 applications and issued 200 bear-hunting permits. Twenty bears were harvested. DNR closed the hunt after only one day due to concern that the target would be surpassed if hunting continued. *House Bill 371 (failed)* would have prohibited DNR from establishing an open season to hunt black bears. The bill would have also prohibited DNR from reducing the black bear population in any area of the State except under the following conditions: (1) in defense of a person, the person's property, or domesticated animals on that property and (2) after exhausting all nonlethal methods of resolving chronic documented agricultural damage or degradation caused by the black bear.

According to DNR, Maryland currently has a breeding population of black bears in the four westernmost counties (Garrett, Allegany, Washington, and Frederick). DNR, however, receives bear sightings and complaints in central and southern Maryland counties each year. *House Bill 463 (failed)* would have required the Secretary of DNR to establish a program to ensure that, by October 1, 2012, a black bear population is introduced into each county in the State.

Fishing

Licenses

Current law provides an exemption from the requirement to possess an angler's license for fishing in nontidal waters for (1) any patient who is under treatment by a State-approved mental health facility, and any individual who attends or resides in a State-approved retardation facility; (2) a caregiver, family member, or designee of a mental health care facility or private group home of a patient who is under treatment by a State-approved mental health facility, under specified conditions; (3) any group of disabled or convalescent patients organized and under the care and supervision of the American Red Cross; and (4) any convalescent patient of a veterans' hospital hospitalized for a service connected disability. *Senate Bill 185 (passed)* authorizes DNR to issue a one-day license exemption to a nonprofit organization to take individuals with physical or mental disabilities fishing from shore in the tidal or nontidal waters of the State. The primary caregiver or representative of the organization attending to the disabled individual, who would also be exempt, must possess a letter of exemption from the Director of the Fisheries Service.

House Bill 706 (passed) establishes a seafood landing license to be issued by DNR. Currently, only individuals harvesting or dealing in finfish caught in State waters are licensed by the State. Licensees are required to report fishing activity to the State to provide for an accounting of the finfish harvested, landed, and sold in the State. Individuals that harvest from outside State waters are able to land and sell fish in Maryland without reporting the fishing activity to the State. The license applies to these individuals. The annual license fee is \$150.

Environment

Water Management

Water Pollution: Groundwater Contamination

Methyl-tertiary butyl ether (MTBE) is a gasoline additive that raises the oxygen content in gasoline, which helps engines burn cleaner, thus reducing tailpipe emissions. It was originally introduced in the late 1970s to replace lead. MTBE is used at higher concentrations in some states, such as Maryland, to fulfill the oxygenate requirements set by Congress in the federal Clean Air Act (CAA).

At room temperature, MTBE is a volatile, flammable, and colorless liquid that dissolves easily in water. Because MTBE is more water soluble and less biodegradable than other gasoline components, it can be introduced into groundwater from leaking underground and aboveground petroleum storage tanks. Recent studies indicate that MTBE vapors can also lead to groundwater contamination. Low levels of MTBE can make drinking water undrinkable due to its offensive taste and color. Although there is limited data on the human health effects of MTBE when ingested through drinking water, the U.S. Environmental Protection Agency (EPA) has advised that MTBE is a potential human carcinogen at high doses.

In response to the growing concerns regarding MTBE in water, several states have taken efforts to ban or begin to phase out the use of MTBE in gasoline and to increase public notification when groundwater contamination is discovered.

Concern regarding MTBE in Maryland increased in 2004 with the discovery of groundwater contamination in Harford County; MTBE contamination has also been found in other Maryland counties. Emergency regulations addressing MTBE contamination, which require improved release detection and site monitoring, took effect January 26, 2005.

In response to this growing concern, several bills addressing MTBE were introduced during the 2005 session. *House Bill 374 (passed)* requires the Maryland Department of the Environment (MDE) to notify the appropriate local health department upon a finding that specified oil contaminants, including MTBE, are present in a monitoring well located in a high-risk groundwater use area in excess of specified levels. The local health department must then notify each owner of property located within one-half mile of the site from which the sample was taken. The bill outlines notification requirements and provides that the person responsible for the oil discharge must reimburse the local health department for the costs associated with providing the required notice.

House Bill 355 (passed) requires each nontransient noncommunity water system in the State to be tested for the presence of MTBE. A nontransient noncommunity water system is defined in regulation as a public water system that is not a community water system and that regularly serves at least 25 of the same individuals over six months per year. Examples include schools, daycare centers, shopping complexes, and businesses that maintain their own water system and do not buy water from a larger water system. Under the bill, if a test indicates that the level of MTBE exceeds the State advisory level, the water system must notify the persons

regularly served by the system and, for systems that regularly serve minors, the parents or guardians of such minors.

House Bill 373 (passed) requires MDE, by December 1, 2006, to develop and submit a report to specified committees of the General Assembly on the viability of alternatives to the use of MTBE in gasoline sold in the State. The report must address the availability of other oxygenates, the economic and environmental impacts of using other oxygenates, and the effectiveness and efficiency of using bioremediation – the use of bacteria and other organisms – to clean oil and gasoline contamination of soil and groundwater.

Several bills were introduced that would have banned the use of MTBE in gasoline sold in the State; however, none of the proposals were successful. *House Bill 205 (failed)* would have prohibited, beginning January 1, 2008, a person from selling or supplying gasoline that contains more than a trace amount of MTBE. *House Bill 960 (failed)*, would have prohibited, beginning October 1, 2006, a person from selling or supplying gasoline that contains more than a trace amount of MTBE or tertiary amyl meth ether; beginning October 1, 2010, a person would have been prohibited from selling or supplying gasoline that contains any amount of those chemicals.

House Bill 659 (failed) would have required the Secretary of the Department of the Environment to negotiate with surrounding Mid-Atlantic states on the creation of a Mid-Atlantic Regional MTBE Compact. The bill would have required the compact members to study specified issues related to the use of MTBE, including the feasibility and effectiveness of using alternative gasoline additives.

Finally, *House Bill 660 (failed)* would have codified current regulations by establishing specified requirements for owners of gasoline underground storage tanks if site groundwater samples contain concentrations of gasoline constituents equal to or greater than specified “levels of concern.”

Wetlands and Waterways

Regulation of wetlands plays a vital role in maintaining the health and function of the Chesapeake and coastal bays. The Wetlands and Waterways Program within MDE administers a statewide program for the management, conservation, and protection of Maryland’s tidal wetlands and nontidal wetlands and waterways. Permits granted for work in privately-owned wetlands are issued by MDE; licenses granted for work in State-owned wetlands are issued by the Board of Public Works (BPW).

Under current BPW regulations, a nonrecurring, nonrefundable license fee of \$1,000 applies for any individual license authorizing a riparian commercial structure or activity or any improvement to navigation. *Senate Bill 1005 (passed)* prohibits BPW from charging a fee of more than \$50 for an individual tidal wetlands license issued for riparian structures or activities where the structure or activity is not intended to increase revenues to a commercial enterprise, and for which a public hearing is not conducted. The fee limit will apply regardless of whether the riparian structures or activities are intended to improve navigation.

Currently, MDE relies to a great extent on general funds for its Wetlands and Waterways Program; since 1991, the program has experienced a 40 percent reduction in personnel, making it difficult for MDE to process and evaluate permit applications in a thorough and timely manner. In an effort to reduce the program's reliance on general funds, restaff the program to historical levels, and improve service to the regulated community, *House Bill 154 (failed)* would have established a Wetlands and Waterways Program Fund within MDE. As the primary revenue source, the bill would have established specified application fees for various wetlands and waterways permits and licenses. The bill was a result of a 2004 interim stakeholder workgroup convened by MDE.

Water Supply

Advisory Committee on the Management and Protection of the State's Water Resources: Governor Glendening established the Advisory Committee on the Management and Protection of the State's Water Resources in December 2002. On March 7, 2003, Governor Ehrlich reissued the executive order that established the committee. The principal charge of the committee was to evaluate the ability of the State to meet its projected water needs. The committee submitted its final report to the Governor in May 2004. Due to time and staff constraints, the committee only broadly addressed its charges. *Senate Bill 164/House Bill 361 (both passed)* establish a new advisory committee to address a number of items that the previous committee was not able to fully address.

Well Drilling: In general, a person must be licensed by the State Board of Well Drillers before the person may practice well drilling in the State. In addition, a person may not drill a well in Maryland unless the person obtains a permit; MDE has delegated the authority to issue well-drilling permits to local health departments. *Senate Bill 531/House Bill 888 (both passed)* provide for an exemption from the well-drilling permit and well driller's license requirements. Specifically, a permit or license will not be required if the person, after having notified the county board of health, installs a temporary dewatering device to facilitate the installation of underground utilities under specified conditions.

Waste Management

Lead Poisoning Prevention

Lead poisoning impacts the cognitive and physical development of young children. Children are exposed to lead through breathing lead paint dust, eating lead paint chips, or absorbing lead while in-utero. Most of the exposures to lead can be eliminated by removing lead paint from the homes of children and pregnant women. Chapter 114 of 1994 established the Lead Poisoning Prevention Program in MDE. The program provides limited liability relief for owners of rental property built before 1950 and others in exchange for the reduction of lead hazards in these older rental properties. The program also provides for limited compensation to children who are poisoned by lead. A qualified offer by a landowner in such instances covers up to \$7,500 for all medically necessary treatments and up to \$9,500 for relocation benefits.

According to MDE, states must have a lead poisoning elimination plan to be eligible for future federal lead poisoning prevention funding or lead hazard reduction funding. In July 2004,

the State issued its plan to eliminate childhood lead poisoning by 2010. In an effort to help meet that goal, the Administration introduced *House Bill 251 (passed)*. As passed, the bill:

- reduces, as of February 24, 2006, the elevated blood lead level (EBL) that triggers notification by local health departments, lead hazard reduction requirements, and compensation to children for medical care and relocation;
- strengthens enforcement authority;
- expands current law to include exterior structures such as playground equipment and benches owned or controlled by the owner of affected property, thereby making such structures subject to the risk reduction, liability protection, and other provisions of the Reduction of Lead Risk in Housing subtitle;
- provides that a rental property owner who receives multiple notices of defect or multiple notices of EBL may satisfy all such notices by subsequent compliance with the modified risk reduction standard; and
- modifies the provision exempting specified property from the risk reduction standards by requiring that the inspection report state that all interior and exterior surfaces are lead-free or the interior is lead-free and the exterior surfaces that were chipping, peeling, or flaking have been restored with nonlead-based paint.

In an effort to ensure that lead hazard reductions are being performed properly, *House Bill 1155 (passed)* prohibits an owner of affected property from employing or engaging a related party to the owner to perform lead-contaminated dust testing or conduct inspections required under the lead law. MDE must impose an administrative penalty of up to \$25,000 on any person who violates that prohibition or the provision in current law providing that any person performing dust testing or conducting inspections may not be a related party to the owner of affected property.

Computer Recycling

EPA estimates that more than 3.2 million tons of electronic wastes are disposed of in landfills each year. Electronic equipment contains metals (such as cadmium, lead, and mercury) and other materials that can become hazardous to human health and the environment if they are not properly managed. Electronics recycling, or “e-Cycling” has become an important element in many local recycling programs in the State in recent years. Chapter 154 of 2004 directed MDE to study the establishment and implementation of an electronic waste collection system in the State. A workgroup assembled by MDE met several times during the 2004 interim. The discussion focused on two means of addressing the problem: (1) the establishment of an advanced recycling fee to fund the collection and recycling of electronics; and (2) the establishment of a system of shared responsibility among stakeholders. According to MDE, wide consensus was not reached. In its January 2005 report, MDE recommended that stakeholders be strongly encouraged to continue to pursue voluntary partnerships to expand electronics recycling in the State until a national solution can be implemented.

In an effort to move forward with e-Cycling in Maryland while a national solution is debated, *House Bill 575 (passed)* establishes a pilot Statewide Computer Recycling Program to be administered by the Office of Recycling within MDE. Beginning January 1, 2006, the bill prohibits specified computer manufacturers from selling a new computer in the State unless the manufacturer has registered with MDE and paid a registration fee. Registration fees will be deposited into the existing State Recycling Trust Fund and used to provide grants to local governments to implement computer recycling programs. The pilot program will terminate on December 31, 2010, unless additional legislation is enacted to extend it beyond that date.

Environmental Restoration

Environmental Covenants: Environmental covenants are increasingly being used as part of the remediation process for contaminated real property. They are typically used when the real property is to be cleaned up to a level determined by the potential environmental risks posed by a particular use, rather than to unrestricted use standards. Chapter 73 of 2004 required MDE to convene a workgroup to review the Uniform Environmental Covenants Act proposed by the National Conference of Commissioners on Uniform State Laws. Adoption of the uniform legislation is designed to overcome various common law obstacles that could otherwise impair the long-term viability of environmental covenants; the legislation was designed to encourage transfer of ownership and property reuse by offering a clear and objective process for creating, modifying, or terminating environmental covenants and for recording those actions so that they are reflected in the title abstract of the property in question. *House Bill 679 (passed)*, which was based on the uniform legislation, establishes provisions governing the creation, applicability, maintenance, and enforcement of environmental covenants in the State.

Oil Cleanups: The Maryland Oil Disaster Containment, Clean-up and Contingency Fund (Oil Fund) was established in 1986 to provide funding to MDE's oil pollution prevention programs, such as permitting, enforcement, and oil spill response. The Oil Contaminated Site Environmental Cleanup Fund (Cleanup Reimbursement Fund) was established in 1993 to reimburse underground storage tank owners for costs incurred during site cleanups. *Senate Bill 814 (passed)* provides for the continuation and increase of fees assessed on oil transferred into the State, modifies the uses of the Cleanup Reimbursement Fund, and requires the Secretary of the Environment to convene a workgroup to review and assess long-term funding needs of the State's oil pollution programs. The fee provisions are anticipated to result in the continuation of approximately \$1 million annually in fee revenues to the Cleanup Reimbursement Fund through fiscal 2010 and an increase in fee revenues of an estimated \$2.75 million annually through fiscal 2010 (\$2 million to the Oil Fund and \$750,000 to the Cleanup Reimbursement Fund).

Scrap Tire Cleanups: Chapter 667 of 1989 established the Tire Fund to support activities related to the cleanup of stockpiled scrap tires and for the collection, transportation, recycling, and processing of scrap tires in the State. Except under specified conditions, all expenditures from the Tire Fund made by MDE for removal, restoration, emergency, or remedial action in response to illegal disposal or storage of scrap tires must be reimbursed to MDE. MDE is authorized to recover such costs regardless of whether or not the discarded tires were disposed of or stored at the site before July 1, 1989. The reimbursement requirement and cost recovery provision do not apply to expenditures of \$10,000 or less related to the removal, restoration, or remedial action in response to the illegal disposal or storage of scrap tires if the owner acquired

the property prior the January 1, 2000 by inheritance and the tires were stored or disposed of at the site prior to that date.

House Bill 1245 (passed) modifies the existing exemption provision to provide that the reimbursement requirement and cost recovery provision do not apply if the owner of a site where scrap tires were stored, disposed of, or processed only before July 1, 1989 (1) is not engaged in the business of storage, disposal, or processing of scrap tires, hazardous substances, or other waste, (2) did not cause or allow scrap tires to be stored, disposed of, or processed on the site, and (3) obtained the site by inheritance prior to January 1, 2000.

Air Quality

MDE's Air and Radiation Management Administration operates the State's air pollution control programs under the framework established by CAA. CAA requires all areas of the country to achieve specific air quality standards and provides penalties for states failing to achieve the standards.

Power Plant Emissions

Pollutants from power plants (such as nitrogen oxides (NO_x), sulfur dioxides (SO₂), carbon dioxide (CO₂), and mercury) contribute to a host of environmental problems including smog, acid rain, global warming, and water pollution. In order to address air pollution on a regional level due to transport of pollutants across state lines, in March 2005, EPA finalized two federal rules relating to emissions of NO_x, SO₂, and mercury. The Clean Air Interstate Rule caps emissions of NO_x and SO₂ in the eastern United States. The Clean Air Mercury Rule establishes standards of performance limiting mercury emissions from coal-fired power plants and creates a market-based cap-and-trade program that will reduce nationwide utility emissions of mercury in two phases.

In an effort to address concerns regarding emissions from coal-fired power plants at the State level, *Senate Bill 744/House Bill 1169 (both failed)* would have established specified limits on emissions of NO_x, SO₂, mercury, and CO₂ from specified power plants in the State. The limits would have taken effect in 2011 with additional limits on CO₂ effective January 1, 2021.

Clean Cars

According to MDE, Marylanders drive more than 135 million miles each day, contributing up to 40 percent of the pollutants responsible for the State's air pollution problems. Although Maryland has operated a vehicle emissions inspection and maintenance program in various parts of the State since 1984, that program does not apply to new motor vehicles. Under CAA, any state may adopt and enforce for any model year standards relating to control of emissions from new motor vehicles or new motor vehicle engines if the standards are identical to the California standards for which a waiver has been granted for such model year.

California's Low Emission Vehicle (LEV) Program, a new car certification program, was adopted in 1990. The centerpiece of the program is a declining fleet average for nonmethane organic gas (NMOG). Four new sets of individual vehicle tailpipe standards were created, and

manufacturers were given the flexibility to produce vehicles meeting any set of standards as well as meeting federal standards so long as their sales weighted average complied with the declining NMOG average. The second phase of the program, called LEV II, took effect in 2004 and will run through 2010.

In an effort to reduce mobile source emissions in the State, *Senate Bill 366 (failed)* would have required MDE, in conjunction with the Motor Vehicle Administration, to establish by regulation California's LEV Program applicable to vehicles of the 2009 model year and each model year thereafter.

Energy Efficiency/Renewable Energy

As noted above, traditional methods of energy generation produce air emissions that can have a significant impact on the environment. Concern regarding these negative environmental effects, combined with fluctuating energy prices and supplies nationwide, has sparked debate over policies that can be implemented to conserve energy.

In an effort to increase energy efficiency in the State, Chapters 2 and 5 of 2004 established energy efficiency standards for certain industrial and consumer products. Concern regarding the impact of the standards on Maryland businesses, however, led to the passage of *Senate Bill 464/House Bill 1030 (both passed)*. The bills make various changes to the Maryland Energy Efficiency Standards Act. Among other things, the bills repeal the energy efficiency standards for ceiling fans, large-packaged air-conditioning equipment over 80 tons, and refrigerators and freezers designed for medical, scientific, or research purposes. The bills also modify the requirements relating to unit heaters and ceiling fan light kits; limit the labeling requirements to products sold through retailers; and provide for a one-year delay in the effective date of the labeling requirements.

Senate Bill 931 (passed) codifies the Energy Efficiency and Economic Development Loan Program and the Energy Efficiency and Economic Development Loan Fund in the Maryland Energy Administration to provide low-interest loans to selected Maryland businesses that promote energy conservation, energy efficiency, energy-related economic development, and stability in business, commercial, and industrial sectors.

In an effort to encourage the production of renewable fuels in the State, *Senate Bill 740/House Bill 1346 (both passed)* authorize the payment of credits for the production of ethanol and biodiesel that meets specified requirements. For a more detailed discussion of these bills, see the subpart "Agriculture" within this Part K.

For a discussion of other energy-related legislation, including a more detailed discussion of *Senate Bill 931*, see the subpart "Public Service Companies" under Part H – Business and Economic Issues of this *90 Day Report*.

Other Environmental Issues

Brominated Flame Retardants

Polybrominated diphenyl ethers, or PBDEs, are a subcategory of brominated flame retardants. Pentabrominated diphenyl ether (pentaBDE), octabrominated diphenyl ether (octaBDE), and decabrominated diphenyl ether (decaDBE) are three PBDE compounds commonly used in flame retardants. Concerns about the effects of PBDEs on human health and the environment are mounting. PBDEs persist in the environment and are building up rapidly in humans and fish. PBDEs have the potential to disrupt thyroid hormone balance and contribute to a variety of developmental deficits. PBDEs may also have the potential to cause cancer. Because of the potentially harmful effects of PBDEs, efforts to eliminate them from products have been made throughout the world. In an effort to reduce the use of these chemicals in Maryland, *House Bill 83 (passed)* generally prohibits, beginning October 1, 2008, a person from manufacturing, processing, selling, or distributing in the State a new product or a flame-retardant part of a new product that contains more than one-tenth of one percent of pentaBDE or octaBDE. The bill also requires MDE to report back to specified committees of the General Assembly regarding decaBDE.

Noise Pollution

Pursuant to current law, in specified counties, shooting sports clubs are subject to the potential for increased regulation relating to sound level limits and noise control rules and regulations. Accordingly, those businesses could potentially be forced out of business if citizen complaints lead to increased regulation. *Senate Bill 685 /House Bill 756 (both passed)* expand the protection that is currently provided to clubs established as of January 1, 2001 in certain counties to shooting sports clubs established as of January 1, 2005 in Allegany, Anne Arundel, Garrett, and Washington counties. As a result, those shooting sports clubs may continue to operate without the concern of increased regulation.

Agriculture

Agricultural Land Preservation

The Maryland Agricultural Land Preservation Foundation (MALPF) was created in 1977 to preserve productive agricultural land. Agricultural preservation districts are formed when qualifying landowners sign voluntary agreements to keep their land in agricultural or woodland use for at least five years. Once land is placed within the agricultural preservation district, the owner is eligible to sell a development rights easement to MALPF. Subject to some limitations, once an easement has been sold, the property is protected from further development.

Critical Farms Program

Based on one of the many recommendations of the Task Force to Study the Maryland Agricultural Land Preservation Foundation, *Senate Bill 502/House Bill 1334 (both passed)* require MALPF and the Maryland Department of Planning (MDP) to establish a Critical Farms

Program to provide interim or emergency financing for the acquisition of preservation easements on critical farms that would otherwise be sold for nonagricultural uses. The bills require MALPF and MDP to jointly develop criteria to be considered by counties when determining whether a property qualifies for the program. MALPF and MDP are also required to study funding options for the program and to submit a report, including proposed legislation, on those funding options to the Governor and the General Assembly by January 1, 2006. *House Bill 1594 (passed)*, a more detailed discussion of which can be found in Part H – Business and Economic Issues – Economic and Community Development of this *90 Day Report*, also modifies the stated purpose of the Maryland Agricultural and Resource-Based Industry Development Corporation to include the temporary purchase of land and easements in accordance with State or local critical farm acquisition programs.

Maryland Agricultural Land Preservation Foundation Board of Trustees

Currently, MALPF is administered by a 12-member board of trustees that includes the State's Comptroller, Treasurer, and Secretary of Agriculture, all of whom serve as ex-officio members. The other nine members of the board serve at-large and represent various regions of the State. *House Bill 75 (passed)* adds the Secretary of Planning, or the Secretary's designee from within MDP, as an ex officio member of the board. To keep the membership of the board at 12, the bill also repeals a requirement that a representative of MDP be an at-large member and reduces the number of at-large members from nine to eight.

Arbitration of Easement Values

The value of an easement is determined when MALPF is requested to purchase the easement from the landowner. The maximum value of any easement is either the asking price or the difference between the fair market value of the land and the agricultural value of the land, whichever is lower. The fair market value, which is determined by the Department of General Services, is the price for the highest and best use of the property. The agricultural value, which is determined by a formula that measures farm productivity, is the price for the property as a farm unit. If the landowner and MALPF do not agree on the value of the easement, either party may request that the matter be referred for arbitration. Currently, there is no deadline for such a request. *House Bill 79 (passed)* requires the request to be made no later than September 30 of the year after the determination of the easement value.

Local Land Preservation

Currently, local governments do not have explicit authority to deny applications for a subdivision plat or plan, a building permit, a nonagricultural conditional use or special exception, or any other nonagricultural use or activity for land that is subject to an agricultural land preservation easement. *House Bill 78 (passed)* clarifies that local governments may deny or rescind a permit for any activity that violates the terms of an agricultural preservation easement, district agreement, or State law.

Additionally, *House Bill 140 (passed)* authorizes St. Mary's County to enter into installment purchase agreements for an aggregate purchase price of up to \$20 million plus interest to acquire the development rights for agricultural or forestry land. The county then will

be required to pay the purchase price for that land either in installments or at the maturity of the agreement.

Termination of Easements

For an easement purchased before October 1, 2004, at any time after 25 years from the date of purchase of the easement, the landowner may request that the easement be reviewed for possible termination. An easement may be terminated only with the combined approval of the governing body of the county containing the land, MALPF, the Secretary of Agriculture, and the State Treasurer. The county government must receive the recommendation of the county agricultural preservation advisory board, and the decision of the county governing body may be made only after a public hearing. Under current law, the county governing body must notify MALPF of its decision within 30 days after the public hearing. Since 30 days has been found to be insufficient for local governments to undertake a comprehensive review of the request for termination, *House Bill 74 (passed)* extends that time period to 90 days.

Funding

MALPF will receive an increase of \$17.7 million in funding for fiscal 2006; for a more detailed discussion of State funding for MALPF and other land conservation programs, see the subpart “Natural Resources” of this Part K.

Animal Health

The Maryland Department of Agriculture (MDA) has long had responsibility for protecting the State’s domesticated animals from contagious and infectious diseases. A low-path avian influenza outbreak threatened the Maryland and Delaware poultry industries in 2004, and three bills passed this session address that and other animal health issues. *House Bill 709 (passed)* authorizes MDA to establish a regulatory program within MDA for businesses that on the same premises slaughter poultry and offer it for sale. The bill requires each live poultry market operator, production facility operator, and poultry dealer to be licensed by MDA. The bill also generally requires a person who keeps poultry to register with MDA.

In addition, *House Bill 76 (passed)* establishes an Animal Health Fund, a special, nonlapsing fund, the purpose of which is to defray the costs of issuing orders or conducting site visits and animal testing to prevent the spread of diseases among animals. *House Bill 76* also authorizes the Secretary of Agriculture to impose an administrative penalty of up to \$10,000 on any person who violates certain provisions of law relating to MDA’s regulation of infectious and contagious livestock and poultry diseases; revenue from any penalties so assessed will be paid into the fund.

Finally, *House Bill 104 (passed)* requires the Secretary of Agriculture to maintain all animal health diagnostic or analytical reports, or reports filed under an animal health program established by the Secretary, in a manner that protects the identity of the animal owner. This requirement would not, however, prevent the Secretary from disclosing identifying information if necessary to protect public health or prevent the spread of infectious or contagious animal diseases.

Nutrient Management and Pollution Controls

The Maryland Agricultural Water Quality Cost Share Program (MACS) was established in 1983 to help farmers pay the cost of installing pollution controls that protect water quality. MACS provides farmers with grants to cover up to 87.5 percent of the cost to install best management practices (BMPs) on their farms to control soil erosion, manage nutrients, and safeguard water quality in streams, rivers, and the Chesapeake Bay.

The cost of installing a BMP varies from farm to farm and project to project. Landowners who originally install BMPs are responsible for the maintenance of those BMPs for a specified time period depending on the practice. If ownership of the farm changes, the original landowner is responsible for ensuring that the new landowner assumes responsibility for maintaining the BMP. If the BMP is not maintained, the original landowner is responsible for returning the full cost-share payment to the State, regardless of the maintenance life span left for the BMP. *House Bill 576 (passed)* repeals the requirement that the landowner repay the full amount and instead authorizes MDA to determine the amount that the landowner must pay for failing to establish or maintain a BMP.

Departmental Funds, Fees, and Penalties

A number of bills passed in the 2005 session relate to fees and penalties assessed by MDA. The Weights and Measures Section of MDA inspects and certifies the measuring and weighing devices in the State to ensure that fairness and equity persist in all commercial transactions involving determination of quantity. In 1992, a special fund was established to help defray the operating expenses of the Weights and Measures Section; revenue for the fund comes from annual registration fees covering almost 62,000 weighing and measuring devices paid by the 7,600 locations where such devices are used commercially within the State. The registration fees have not increased since the special fund was established. *House Bill 71 (passed)* increases annual registration fees for various weights and measures and establishes an annual registration fee of \$100 for a point-of-sale system connected to a weighing or measuring device.

MDA is not insulated from heightened concerns about terrorism in recent years. *House Bill 402 (passed)* requires a distributor of ammonium nitrate – a substance usually used in fertilizers but also capable of being used as an explosive – to maintain for at least two years a detailed record of each sale and distribution of ammonium nitrate and to provide those records to the Secretary of Agriculture upon request. The bill requires the Secretary of Agriculture to adopt regulations, in consultation with the Governor's Office of Homeland Security, to carry out the provisions of the bill.

House Bill 77 (passed) authorizes the Secretary of Agriculture to levy an administrative penalty on any person who violates provisions of law pertaining to commercial feed and fertilizer, agricultural liming materials, and pesticide registration and labeling. Currently, the only recourse available for the State against such violators is either prosecution through the State's Attorney or revocation of the person's registration processed through the Office of Administrative Hearings. Fines assessed under the provisions of the bill may not exceed \$2,000.

Agricultural Products

According to the 2002 Census of Agriculture, over 2,300 farms in Maryland derive most of their income from grains and oilseed crops. Demand for such products could increase with the enactment of *Senate Bill 740/House Bill 1346 (both passed)*, the Renewable Fuels Promotion Act of 2005. These bills authorize the payment of credits for the production of ethanol and biodiesel and establish a Renewable Fuels Incentive Board within MDA to review credit certification applications and pay credits to producers over a 10-year period. For fiscal 2008 and each succeeding fiscal year, the bills require the Governor to include sufficient funds in the State budget to implement the credit program; based on the limits established by the bill, credit payments could total up to \$4 million annually. The small grains – including wheat, rye, triticale, oats, and barley – envisioned as a source of ethanol can be used as winter cover crops; those crops serve to consume nutrients remaining from the previous commodity crop and thus hold nutrients in the field rather than polluting the Chesapeake Bay. The use of biodiesel, which is produced from soybean oil and other bio-based oils, is anticipated to increase significantly nationwide, due in part to the increased demand for a clean-burning alternative to sulfur in diesel fuel.

The General Assembly also took steps in the 2005 session to promote the seafood and aquaculture industries. *Senate Bill 283/House Bill 971 (both passed)* establish an 18-member Seafood Program Management Team, an Innovative Seafood Technologies Program, an Aquaculture Coordinator, and a five-member Aquaculture Review Board within MDA and make other minor changes to the aquaculture program within MDA. These changes are based on recommendations of the Task Force to Study the Economic Development of the Maryland Seafood and Aquaculture Industries, established in 2002 and charged with reviewing current methods of processing and marketing Maryland seafood, developing innovative methods of increasing the demand for Maryland seafood, examining the viability of different types of aquaculture in the State, and developing methods to encourage and foster aquaculture.

Additionally, the General Assembly passed legislation relating to the promotion and development of grape and wine production in the State. A detailed discussion of *Senate Bill 566/House Bill 1450 (both passed)* and *Senate Bill 565 (passed)* can be found in Part H – Business and Economic Issues – Alcoholic Beverages of this *90 Day Report*.

Departmental Boards, Commissions, and Programs

The Maryland Tobacco Authority is responsible for licensing and regulating growers, buyers, and sellers of leaf tobacco in the State and oversees an annual tobacco auction. The authority is scheduled to terminate in 2006. *Senate Bill 249/House Bill 285 (both passed)* extend that termination date until 2011; the bills also decrease the number of members of the authority from eight to six and require that the members be appointed from a list of nominees submitted by MDA, instead of by the Maryland Farm Bureau, as currently required. The bills also raise the ceiling on the poundage tax rate and repeal the annual compensation paid to non-State employee members.

With *House Bill 73 (passed)*, the General Assembly expanded the membership of the Maryland Agricultural Commission, which provides advice and counsel to the Secretary of

Agriculture on matters pertaining to agriculture, from 24 to 29 members, increasing from one to two the number of members representing the nursery industry and adding new members representing agri-business, the forestry industry, the aquaculture industry, and the agri-tourism industry.